

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

)	
MEDTECH PRODUCTS INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DENTEK ORAL CARE, INC.,)	Civil Action No. 07 CV 03302-UA-LMS
)	
Defendant.)	
)	PLAINTIFF MEDTECH PRODUCTS
)	INC.'S ANSWER TO
)	POWER PRODUCTS, INC.'S
)	COUNTERCLAIM
MEDTECH PRODUCTS INC.,)	
)	
Plaintiff,)	
)	
v.)	ECF FILED
)	
POWER PRODUCTS, INC.)	
d/b/a SPLINTEK,)	
)	
Defendant.)	
)	

Plaintiff/Counter-Defendant Medtech Products Inc. (“Medtech”) hereby submits the following Answer to Defendant/Counter-Plaintiff Power Products, Inc. d/b/a/ Splintek’s (“Power Products”) Counterclaim:

FIRST AFFIRMATIVE DEFENSE

Power Products' Counterclaim fails to state a claim against Medtech upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Power Products' claims are barred in whole or in part by the equitable doctrines of waiver and/or estoppel, and/or applicable statute of limitation.

THIRD AFFIRMATIVE DEFENSE

Power Products' claim for costs and attorney's fees is barred because it lacks basis in law or contract.

FOURTH AFFIRMATIVE DEFENSE

Medtech reserves the right to amend its answer to assert additional defenses if discovery yields additional information warranting such amendment.

FIFTH AFFIRMATIVE DEFENSE

Power Products' claims are barred by the doctrine of unclean hands.

ANSWER

In response to the numbered paragraphs of Power Products' Counterclaim, Medtech states as follows:

PARTIES

1. Admitted.
2. Admitted.

JURISDICTION AND VENUE

3. In response to the allegations in Paragraph 3 of the Counterclaim, Medtech avers that this Court has subject matter jurisdiction and personal jurisdiction over this action.

4. In response to the allegations in Paragraph 4 of the Counterclaim, Medtech avers that venue is proper in this Court.

COUNT I

(Non-existence and Non-Infringement of Medtech's Alleged Federal and Common Law Trademark Rights)

5. Medtech incorporates by reference its responses to all previous allegations of the Counterclaim.

6. In response to the allegations of Paragraph 6 of the Counterclaim, Medtech states that it presently owns a pending federal trademark application for its NIGHTGUARD™ mark (NIGHTGUARD, Ser. No. 77/056,556, United States Patent and Trademark Office (“USPTO”)). Medtech states that the USPTO Office Action is a document that speaks for itself and Medtech denies any statement to the extent that it is contrary to or mischaracterizes the Office Action. Further, Medtech expressly denies that the NIGHTGUARD™ mark is “commonly descriptive.” The remaining statements in Paragraph 6 of the Counterclaim are denied.

7. Denied.

8. Denied.

COUNT II

(Medtech’s Infringement of Splintek’s Common Law Trademark Rights)

9. Denied.

10. Denied.

11. It is admitted that Medtech has sold its NIGHTGUARD™ brand dental protectors in the over-the-counter market “throughout the United States” for more than ten years. The remaining allegations of Paragraph 11 are denied.

12. Denied.

13. Denied.

14. Denied.

15. Medtech denies each and every factual allegation and factual and legal conclusion contained in the Counterclaim, not heretofore admitted, denied or explained.

PRAYER FOR RELIEF

AND NOW HAVING FULLY ANSWERED, Medtech prays:

1. That Power Products' Counterclaim be dismissed with prejudice;
2. That Medtech recover its lawful costs and attorneys' fees in this cause; and
3. For such other and further relief as the Court may deem just.

Dated: June 28, 2007

Respectfully submitted,

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